IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

COMPANY APPLICATION No.211 of 2006.
IN
COMPANY PETITION No.708 of1989.

M/s. M. P. Traders. .. ..Petitioners.

And

Sudhirkumar M. Gouti .. ..Applicant.

Versus.

The Official Liquidator
High Court,Bombay. .. ..Respondent.

Mr. Bharat Vaishnava for Petitioners.

Mr. B. K. Bali i/b. Thakker Bali, Ex.Director.

Mr. K.V. Goutam, Dy.O.L. present.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 30th June, 2006.

P.C.

1] Perused the prayer in the application and the affidavit in support.

2] The Constituted Attorney of one Surajmal Gouti who claims to be residing at Flat No.5, III Floor, Zaveri Building, 157/161, Princess Street, Mumbai, 400 002, has filed the present application and prays that the order passed by this Court in Company Application No. 320/1989 in Company Petition No. 708 of 1989 on 22nd November, 1989 be set aside or modified and the seal on these premises placed by the Official Liquidator be removed.

3] It is contended in the application and affidavit in support that the representative of the Official Liquidator took possession of one room admeasuring approximately 150 sq.ft on 4th December, 1989. He states that the portion of the premises of which possession has been taken belongs to Gouti family and forms part of larger premises which are described in a plan, Annexure B. After setting out the facts pertaining to the possession of these premises by members of Gouti family, a reference is made to an application made by Ranjitmal Gouti being Company Application No. 332/1989. That application was rejected by an order passed by this Court on 15th February,1990. An appeal challenging that order, was also dismissed. The matter was carried to the Supreme Court unsuccessfully by Ranjitmal Gouti. The Supreme Court while dismissing Special Leave Petition granted liberty to take out appropriate proceedings.

4] Now what Ranjitmal Gouti could not achieve in the Company Application filed by him is sought to be achieved by the applicant on the basis of his independent right,title and interest in the premises.

5] The liberty to institute appropriate proceedings contemplated in the order passed by the Supreme Court, with respect, in my view, does not

mean the present Company Application. When the liberty is granted to file an application for establishing title to the property the Company Application cannot be a remedy.

6] Mr. Vaishnav could not dispute that despite the property being in possession of the Official Liquidator, there is nothing in law which prevents the applicant from filing a suit on title and impleading thereto all necessary parties including the Official Liquidator and claim appropriate declarations and reliefs. Neither order passed by this Court appointing Official Liquidator nor the dismissal of the earlier Company Application would constitute a bar in institution of such proceedings. More so, when the Supreme Court has granted liberty to Ranjitmal Gouti. Additionally, the application is highly belated and no relief can be granted after lapse of nearly 17 years from the date of Liquidator's taking possession.

7] The company application is dismissed.

8] However, this order shall not prevent applicant from instituting a suit and claiming appropriate relief therein.

9] The Official Liquidator shall submit a report on the complaint of the applicant, who is in possession, with regard to non opening of said room for cleaning from time to time.

[**S.C.DHARMADHIKARI,J.]**